IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 510 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRUBHAI SAVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

Application THROUGH JAIL by the Petitioner.

Mr.A.Y. Kogje, Additional PUBLIC PROSECUTOR,

for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2004

ORAL JUDGEMENT

Through jail, this application is filed by the accused for releasing him on parole for a period of one month. As per the application, for performing the

religious rite of ash immersion of his deceased father, who died some time back, he wants parole.

In response to the notice of this Court, Mr.Kogje, learned APP, after taking instructions, submitted that so far as the factual aspect about the religious ceremony is concerned, the same is true and correct. He, however, submitted that the accused is having other two brothers, who can take care of such religious ceremony. In my view, when the father of the petitioner died and for performing the religious rite of ash immersion of his deceased father, if he wants parole, even if there are other brothers, naturally, sentimentally also, he can be said to be interested and it would be better that the appropriate Authority may reconsider the decision and may ultimately pass appropriate order in this connection after considering all the facts and circumstances of the case. Under these circumstances, the matter is sent back to the appropriate authority for reconsideration. The authority may consider the facts and circumstances of the case. As per the particulars given to this Court, the sentence awarded to him is five years and by this time, he has undergone two-and-a-half years' imprisonment. As per the report submitted to this Court, he has not been given any parole or furlough benefit.

Considering all these aspects, the authority may consider his application afresh and may take appropriate decision again in accordance with law. Such decision may be taken within a period of two weeks from today.

Mr.Kogje, learned AGP, is requested to communicate this order forthwith to the State Government.

Writ also be sent to the District Magistrate, Rajkot forthwith for taking appropriate decision, as indicated in this order, within the stipulated time. It is clarified that it is for the appropriate authority to take the ultimate decision considering the facts and circumstances of the case.

22nd June, 2004 (P.B. Majmudar, J.)

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(apj)